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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/731,437  
Invention: HORIZONTAL STRONG SUPPORTING BOW  
HOLDERS  
Applicant: RANDY OXLEY  
Filed: DECEMBER 6, 2000  
TC/A.U.: 3727  
Examiner: MAERENA W. BREVARD

APPLICANT'S BRIEF ON APPEAL

Mail Stop Appeal Brief--Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REAL PARTY IN INTEREST

The only real party in interest is the above referenced Applicant, Randy Oxley.

RELATED APPEALS AND INTERFERENCES

There are no related appeals known to Applicant that will directly affect or be directly affected by the Board's decision in this pending appeal.

STATUS OF CLAIMS

A listing of the appealed Claims as amended in response to the Examiner's August 11, 2003 Office Action is attached hereto in Appendix A. Claims 1, 6-10, 13, 21, 22, 24-26, and 28-33 are pending in the above referenced patent application, with Claims

30-33 being withdrawn from consideration at the present time. Claims 1, 6-10, 13, 21, 22, 24-26, 28 and 29 are finally rejected. All rejected Claims are being appealed in this appeal.

This Application has been pending for nearly four years. In an Office Action dated 8/14/2002, the Examiner indicated that Claims 2-5 and 12 contained allowable subject matter. Applicant responded by rewriting Claims 2-5 and 12 in independent form as Claims 23-27 on November 14, 2002. The next communication from the Examiner was an Office Action dated 8/11/2003 in which all Claims were rejected, including Claims 23-27. There was no explanation as to why the indication of allowable subject matter was withdrawn by the Examiner.

#### STATUS OF AMENDMENTS

Proposed amendments to the finally rejected claims were discussed with the Examiner during a telephone interview on July 28, 2004; however, none of the proposed amendments were entered by the Examiner.

#### SUMMARY OF INVENTION

The present invention is for a holder for bows used in archery which bow holder is comprised of a supporting member 2, a spacing member 4, and an engagement member 6. The supporting member 2 is adapted to support a generally taut bow string that may be placed thereon and from which the stringed bow may hang downwardly. The engagement member 6 is adapted to engage a hunter's clothing, belt, body, or other equipment that may be worn on or carried with or near the body. The spacing member 4 is adapted to combine the engagement member and the spacing member so that the

supporting member is held in a position generally below the engagement member and outwardly from the hunter's body. (Spec. p. 9, line 15 - p. 10, line 2).

Embodiments of the present invention are described herein first with reference to Fig. 1. In Fig. 1, the supporting member 2 is illustrated as a trough that is formed of an inward section comprising a wall 8, an outward section comprising a wall 10, and bottom section, comprising a wall 12 disposed therebetween. In Fig. 1, the outward wall 10 is shorter than the inward wall 8 to facilitate the convenient and comfortable release of the bow string from the trough when a hunter grasps the bow handle (that is disposed below the trough) and lifts the bow upwardly. The invention may be practiced in an embodiment wherein a portion of the outward section 10 and/or a portion of the bottom section 12 is removed (See Fig. 7) to provide an opening through which a knocked arrow may pass. In this manner, the hunter awaiting prey may wait with a ready arrow to further eliminate steps required between spotting prey and releasing an arrow. (Spec. p. 10, lines 3-13).

Fig. 2 is a front elevation view of the embodiment illustrated in Fig. 1. In the embodiment of Figs. 1 and 2, the spacing member 4 is a simple section of wall that extends from the support member to the engagement member 6, and the engagement member 6 is shown as a wall having two openings 14 formed therein which are adapted to receive a hunter's belt and to be held firmly against a hunter's side. In this manner, the engagement member wall serves as a belt plate in this first embodiment. The present invention in its various embodiments may also be practiced using an integral belt, harness, or other straps that may be provided as a part of the product. In such

embodiments, the engagement member 6 may be integral with a belt or other holder affixing means rather than being adapted to receive or engage separate items such as belts, straps, etc. (Spec. p. 10, line 14 - p. 11, line 3).

### ISSUES

Whether Claims 1, 6-10, 13, 21, 22, 24-26, 28 and 29, as shown in Appendix A, are patentable under 35 USC § 102 as being anticipated by Jones.

### GROUPING OF CLAIMS

Applicant makes no statement as to whether any group of Claims stands or falls together.

### APPELLANT'S ARGUMENT

Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. *Carella v. Starlight Archery and Pro Line Co.*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (C.A. Fed. 1991).

### **Claim 1**

Applicant respectfully submits that Claim 1 is distinguishable from Jones because Jones does not disclose or suggest a "spacing member." Applicant's Claim 1 claims three separate elements: a support member, a spacing member, and an engagement member. As defined on page 10, lines 4-6 of applicant's specification, the "supporting member 2 is illustrated as a trough . . ." capable of supporting a bow string

from which the stringed bow hangs downwardly. In order to comfortably hold the bow at the hunter's side, Applicant's specification states that a spacing member must "extend [the] support [] a selected distance from a hunter's body and below the hunter's waist . . . ."(Applicant's specification page 12, line 3).

Jones discloses a "J-shaped tool support member 20" comprising an inner vertical arm 22, a base support 24, and an outer arm 26. (Jones Col. 3, lines 17-20). Jones does not disclose any separate element that can be considered a "spacing member" which spaces the support member outward from the engagement member. In the Appendix to the May 4, 2004 Office Action, the Examiner has marked up Jones' FIG. 5 to show what the Examiner perceives as the "spacing member." However, nowhere in Jones' disclosure is the labeled "spacing member" described. The Examiner's labeled "spacing member" is best described in Jones' specification as a "base support 24." Jones' specification makes no reference to a "spacing member" when describing that the "inner vertical arm 22 . . . descends into bulb shaped support 24." (Jones Col. 3, lines 22-23). Therefore, Applicant's claimed invention is patently distinguishable from Jones because Applicant's Claim 1 contains a functional element (the spacing member) that is not disclosed in Jones.

Even if Jones has a spacing member as shown by the Examiner in the Appendix to the May 4, 2004 Office Action (which Applicant is not saying that it does), Applicant's Claim 1 is still patently distinguishable from Jones because Jones' "spacing member" is not combined with the support member so as to extend inwardly therefrom. Jones' specification states that the "inner vertical arm 22 . . . descends into bulb shaped support

24," with no reference to any horizontal extension. (Jones Col. 3, lines 22-23). By contrast, Applicant's Claim 1 claims "a spacing member combined with the support member and extending generally inwardly and upwardly therefrom . . ." (emphasis added).

Applicant's spacing member provides a significant advantage over Jones. Applicant's spacing member extends the support member out away from a hunter's body so that the bow hanging downwardly from the device does not interfere with the hunter's legs as the hunter is walking. This functional element is not suggested in Jones because the hammer or other "T-shaped tools" that are to be used in Jones' device are not shown to hang down so far as to interfere with the user's legs.

Jones does not disclose any element which can be seen as a "spacing member." Applicant's claimed invention is therefore distinguishable because, as discussed above, invalidity for anticipation requires that all of the elements and limitations of the claim must be found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986).

### **Claims 9 and 10**

Applicant's Claims 9 and 10 claim the spacing member comprising a wall or arm "having an inward section and an outward section, said outward section being combined with the support member and said inward section being combined with the engagement member." As discussed above, Jones does not disclose a "spacing member" and therefore does not disclose Applicant's Claims 9 and 10. However, even if Jones

did disclose a spacing member as illustrated in the Examiner's Appendix, Jones clearly does not disclose a spacing member wall or arm having inward and outward sections.

### **Claim 26**

Applicant's Claim 26 claims that the "support member inward section is adjustable." Applicant respectfully submits that Jones does not disclose this limitation because it is the support member outward section in Jones that is flexible as shown by Jones' FIGS. 3 and 4.

### **New Claims 28 and 29**

Applicant respectfully submits that new Claims 28 and 29 are not anticipated by Jones because Jones' specification does not disclose a spacing member extending outward from the user's body. Applicant's Claim 28 claims that "the spacing member extends the support member outwardly from the hunter's body extending at least some distance past the engagement member". Applicant's new Claim 29 adds that the spacing member extends outward "at least 2 centimeters."

The "spacing member" labeled by the Examiner in the Examiner's Appendix is referred to as a vertical arm 22 in Jones' specification, with no reference to outward or horizontal extension. Furthermore, Jones' specification states that the "inner vertical arm 22 . . . descends into bulb shaped support 24," again with no reference to horizontal extension. (Jones Col. 3, lines 22-23). As discussed above, Jones does not disclose a "spacing member" element, however, even if Jones did, Applicant's Claims 28 and 29 would not be anticipated by Jones because the "spacing member" illustrated in the Examiner's Appendix does not extend outwardly past the engagement member. The

purpose and definition of Applicant's spacing member, as discussed above, is to put the support member at a distance away from the hunter's body so the hunter's bow does not interfere with the hunter's legs as he/she is walking. This element and function is not disclosed in Jones.

For all of the above reasons, it is submitted that Applicant's claimed invention is patentable over Jones and that the rejected claims recite novel and patentable subject matter. It is therefore respectfully requested that the decision of the Primary Examiner be reversed.

The appeal brief fee of \$ 170.00 is submitted herewith.

Respectfully submitted,

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October 14, 2004

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 14, 2004.

  
Ryan N. Carter, Registered Representative



## **APPENDIX**

### **Listing of Claims:**

1. A holder adapted to support a stringed bow in a generally horizontal position outwardly from a hunter's body at a position below the hunter's waist comprising:
  - a support member;
  - a spacing member combined with the support member and extending generally inwardly and upwardly therefrom; and
  - an engagement member combined with said spacing member and being disposed generally above and inward from the support member;
  - the support member comprising an inward section and an outward section, said sections forming an upwardly concave surface.
2. - 5. (canceled)
6. The holder of Claim 1 wherein:
  - the support member comprises a wall.
7. The holder of Claim 6 wherein
  - the support member wall has an opening formed therein for accommodating an arrow.
8. The holder of Claim 1 wherein:
  - the support member comprises two or more support arms.
9. The holder of Claim 1 wherein:

the spacing member comprises a wall having an inward section and an outward section, said outward section being combined with the support member and said inward section being combined with the engagement member.

10. The holder of Claim 1 wherein:

the spacing member comprises an arm having an inward section and an outward section, said outward section being combined with the support member and said inward section being combined with the engagement member.

11. - 12. (Canceled)

13. The holder of Claim 1 wherein:

the engagement member comprises a wall having at least two openings formed therein.

14. - 20. (Withdrawn)

21. The holder of Claim 1 wherein:

the engagement member further comprises a strap.

22. The holder of Claim 1 further comprising:

a strap.

23. (Canceled)

24. The holder of Claim 1 wherein:

the upwardly concave surface is rounded.

25. The holder of Claim 1 wherein:

the support member further comprises a bottom side connected to the inward section and the outward section and extending therebetween.

26. The holder of Claim 1 wherein:

the support member inward section is adjustable.

27. (withdrawn)

28. The holder of Claim 1 wherein the spacing member extends the support member outwardly from the hunter's body extending at least some distance past the engagement member.

29. The holder of Claim 1 wherein the spacing member extends the support member outwardly from the hunter's body at least 2 centimeters.